

**(1957) 08 KL CK 0007**  
**In the High Court Of Kerala**  
**Case No : A.S. No. 173 of 1956 (E)**

S. Kumaraswamy

APPELLANT

Vs

The South Travancore Electric Workers" Union and Others

RESPONDENT

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**Date of Decision :** 20-08-1957

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Industrial Disputes (Appellate Tribunal) Act, 1950 — Section 16  
Industrial Disputes Act, 1947 — Section 19(3)

**Citation :** AIR 1958 Ker 286 : (1957) 1 KLJ 1016 : (1958) 2 LLJ 72

**Hon'ble Judges :** K.T. Koshi, C.J.;N. Varadaraja Iyengar, J

**Bench :** Division Bench

**Advocate :** T.N. Subramonia Iyer and S. Subramonia Iyer, for the Appellant; M. Ramanatha Pillai, for Respondent 1 and C.M. Kuruvilla, Government Pleader for Respondents 2 and 3, for the Respondent

**Final Decision :** Dismissed

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## Judgement

K.T. Koshi, C.J.—This is an appeal from the order of M. S. Menon, J., dated 22-2-1956 in O. P. No. 266 of 1955 dismissing the appellant's application for a writ of certiorari or other appropriate writ or direction concerning the award dated 27-12-1951 of the Industrial Tribunal, Trivandrum, the award dated 28-8-1954 passed on appeal therefrom by the Labour Appellate Tribunal of India, III Branch and the demand notice dated 28-9-1955 issued to the appellant by the Tahsildar, Agasteeswaram Taluk at Nagercoil.

The appellant before us who was the petitioner before the learned Judge was formerly the licensee of the Nagercoil Electric Supply Corporation and while the said concern was under his management fourteen workmen happened to be retrenched. As a result of that a strike was organised by the workmen and consequent on it fourteen others happened to be dismissed.

The cause of the retrenched and the dismissed workmen was taken up by the South Travancore Electric Workers" Union and eventually the Government

referred the disputes for adjudication by the Trivandrum Industrial Tribunal. The Tribunal passed an interim award on 27-12-1951 and after some abortive attempts to get the same quashed by the Travancore-Cochin High Court, it was taken up in appeal before the Labour Appellate Tribunal of India. The Appellate Tribunal disposed of the appeal on 26-8-54 on the basis of an agreement entered into by the parties before it.

The amounts due as per the Appellate Tribunal's award remaining unpaid, the workmen moved the Government through the Labour Commissioner for realisation of the amounts by resort to the provisions of the Revenue Recovery Act as provided in Section 20 of the Industrial Disputes (Appellate Tribunal) Act (48 of 1950). The Government accordingly directed the authorities of the Revenue-Department to take the necessary steps for recovering the amount from the appellant and a demand notice was issued to him to pay an amount of Rs. 6195-2-0 which according to the concerned workmen was due to them pursuant to the Appellate Tribunal's award.

In Original Petition No. 266 of 1955 the validity of the two awards and that of the demand notice were challenged, but as pointed out in the order under appeal there was no specific prayer to quash either the two awards or the demand notice issued to the appellant. All the same the learned Judge dealt with the petition before him as if the needed prayers were there and ultimately dismissed the petition with costs". Hence this appeal.

2. Learned Counsel for the appellant repeated before us the various grounds urged before the learned Single Judge to quash the awards and the demand notice. The first point argued was that the application for enforcement of the award was time-barred. Reference was made to Section 19(3) of the Industrial Disputes Act, 1947, which provides that:

"An award shall, subject to the provisions of this section, remain in operation for a period of one year from the date on which the award becomes enforceable u/s 17-A".

Section 17-A is to the effect that an award shall become enforceable on the expiry of thirty days from the date of its publication u/s 17. The point of the argument was that as the original award was published on 29-1-1952 it became enforceable from 1-3-1952 and that as the demand notice was issued only on 29-8-1955 beyond the one year referred to in Section 19(3) the award had become unenforceable.

Apart from the fact that we cannot subscribe to the view that Section 19(3) prescribes a period of limitation for enforcement of an award, the argument overlooks the provisions in Section 16 of the Industrial Disputes (Appellate Tribunal) Act, 1950., The learned Single Judge has quoted in his judgment Section 16 and as pointed out there once the Appellate Tribunal modifies an award of the Industrial Tribunal the Appellate Tribunal's award alone subsists and that alone is capable of enforcement and not the superseded original award.

The first point taken in the appeal therefore fails. We may however also point out that in our view Section 19(3) does not provide a period of limitation for enforcement of an award, but that it only states (subject to the other provisions in the section) for how long an award shall remain in force or continue to bind the parties. In this context we may quote with advantage the observations of Sarjoo Prosad, C. J, in *G.C. Bezbarua Vs. State of Assam and Others* :

"The Section (Section 19(3)) says that an award shall, subject to just exceptions, remain in operation for a period of one year. The period of one year may have expired but the liabilities or obligations incurred under the award may still continue to subsist. It would be too much to assume that with the expiration of the Award liabilities already incurred are at an end."

3. The second point urged before us was that inasmuch as the appellant had served notices u/s 19(6) of the Industrial Disputes Act, 1947 on 7-5-1954 the award cannot remain in force beyond two months of the date of the said notices. We confess that this argument is really unintelligible to us. The appellant ceased to have any connection with the industry concerned from 1-12-1952 and the Appellate Tribunal's award fixes 30-11-1952 as the outer date for the appellant's liability to run.

We fail to see how a notice issued in May 1954 can do away with his liability incurred before 30-11-1952. If the liability was a continuing one on the date of the notice u/s 19(6) we could have appreciated an argument that it cannot continue after two months from the date of the notice. We feel constrained to say that the second point is also without substance.

4. Nor are we able to appreciate that the liability for the amounts demanded was that of the State which had acquired the industry concerned with effect from 1-12-52, As pointed out earlier the liability was for the period anterior to the assumption by the State and the State was not a party before the Appellate Tribunal whose award is now sought to be enforced.

5. The appellant's counsel also questioned the validity of the compromise which led to the Appellate Tribunal's award. It has not been shown that the learned counsel who represented the appellant before the Appellate Tribunal and one representative of his (the appellant's) whose name appears in the Appellate Tribunal's award were incompetent to enter into the compromise arrangement.

Moreover we do not consider it to be within the scope of an application under Article 226 of the Constitution to hold an enquiry concerning the question whether the persons who entered into the compromise on behalf of the appellant were authorised to do so or not. If the appellant desired to have the award vacated on that ground he ought to have had recourse to other proceedings and not to invoke Article 226 in that behalf. This is the view the learned Single Judge took on the matter and we are in full agreement with that view.

6. The further points urged in support of the appeal that there should have been

not less than twenty-eight demand notices and not a consolidated one and that at the instance of the President of the South Travancore Electric Workers' Union no proceedings under the Revenue Recovery Act could have been initiated were also considered by the learned Single Judge and if we may say so rightly repelled.

We have already referred to the fact that the Government was moved to initiate the necessary proceedings for recovery by the twenty-eight workmen concerned and not by the President of the Union. Further, the President was representing the workmen throughout the proceedings, apparently by virtue of the provisions in Section 36(1) of the Industrial Disputes Act, 1947.

7. The appeal fails in the result and we dismiss it with costs. Advocate's fee Rs. 75/- to Respondent 1 and a like amount to Respondent 2. Order accordingly.